

BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
OF THE STATE OF WASHINGTON

NORTHWEST COMPOSITES,

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHE No. 88-172

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

This is an appeal of Notice and Order of Civil Penalty issued by Puget Sound Air Pollution Control Agency (PSAPCA) to Northwest Composites for alleged violations of air pollution control regulations concerning asbestos removal and disposal. A formal hearing was held on March 31, 1989 at the Snohomish County Council offices at Everett, Washington. Board Chairman Wick Dufford, presiding, and Member Harold S. Zimmerman were present. Appellant Northwest Composites was represented by James Toomey, Vice President. Respondent PSAPCA was represented by attorney Keith D. McGoffin of McGoffin & McGoffin,

1 Tacoma, Washington. The proceedings were recorded by Pam Moughton of  
2 Bartholomew & Associates.

3 Appellant did not dispute the facts presented by PSPACA through  
4 an affidavit of its inspector and accompanying exhibits. From the  
5 testimony, exhibits, affidavits, and statements, the Board makes these

6 FINDINGS OF FACT

7 I

8 Northwest Composites, a company which retrofits airplane  
9 interiors, recently commenced operations in this state at 12810 - 39th  
10 Avenue N.E., Marysville, Washington 98270.

11 II

12 At some point in early 1988, Northwest Composites purchased a  
13 press from the U. S. Government at a government auction in Stockton,  
14 California. It was shipped from California in open trucks. The  
15 plattens of the press were placed on the floor after the press was  
16 unpacked. A representative of the Washington Department of Labor and  
17 Industries saw the plattens and told the company representative that  
18 it appeared asbestos was used in the packing.

19 III

20 Northwest Composite employees conducted the asbestos removal on  
21 or about May 13, 1988. Prior to doing so, Northwest did not file with  
22 PSAPCA a Notice of Intent to Remove or Encapsulate Asbestos, nor pay  
23 the appropriate notification fee. The persons who removed the  
24

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1 asbestos were not certified by the Department of Labor and Industries  
2 to undertake such a project.

3 IV

4 PSAPCA's Inspector Richard J. Gribbon conducted an inspection on  
5 May 24, 1988 at Northwest Composites' Marysville site. His inspection  
6 inside where the asbestos removal had occurred showed no asbestos.  
7 However, in his inspection of two metal press portions lying on the  
8 cement-covered ground outside the north end of the building, Gribbon  
9 observed pieces of suspected asbestos in a dry, friable condition on  
10 top of the two metal units and still affixed to the units. The  
11 inspector also noted similar dry, friable material on the ground  
12 approximately 10 feet away from the units. His inspection also showed  
13 similar suspected asbestos material lying loosely atop pallets 30 feet  
14 north of the metal plates.

15 V

16 Inspector Gribbon took photographs of the scene and recovered two  
17 samples of the suspected asbestos material in the presence of Kurt  
18 Gustafson of Northwest Composites. The inspector advised Mr.  
19 Gustafson that PSAPCA would issue notices of violation should samples  
20 prove positive for more than one percent asbestos upon analysis and  
21 also advised Mr. Gustafson of potential civil penalty. He further  
22 stated that a new notification would be required for clean up of the  
23 exterior, that Article 10 of PSAPCA's Regulation I should be complied  
24

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1 with, and that failure to do so would result in additional notices of  
2 violation.

3 VI

4 On June 21, 1988, PSAPCA received results of the analysis of the  
5 two samples taken from Northwest Composites on May 24, 1988. Each  
6 sample showed 75% amosite and 10% chrysotile asbestos for a total of  
7 85% asbestos material.

8 VII

9 On June 22, 1988, PSAPCA learned that the cleanup had still not  
10 occurred of the loose, dry, friable material located on the ground and  
11 on metal units at the north end of the building.

12 VIII

13 On June 24, 1988, PSAPCA issued Notices of Violation Nos. 025078  
14 and 025079 (violations of PSAPCA's Regulation I, Article 10), stemming  
15 from the original asbestos removal May 13, 1988 and Notice of  
16 Violation No. 025080 was prepared for the observed violations on May  
17 24, 1988.

18 IX

19 On August 15, 1988, PSAPCA issued Notice and Order of Civil  
20 Penalty No. 6870, assessing a civil penalty in the amount of \$1,000  
21 against Northwest Composites based on the May 24, 1988 inspection.  
22 The Notice asserted a violation of three separate provisions of  
23 Article 10:

24  
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(4)

Section 10.04(b)(2)(iii)(A): Failure to adequately wet asbestos materials that have been removed or stripped to ensure that they remain wet until collected for disposal...

Section 110.04(b)(2)(iii)(B): Failure to collect asbestos materials that have been removed or stripped for disposal at the end of each working day... .

Section 10.04(b)(2)(iii)(C): Failure to contain asbestos materials that have been removed or stripped in a controlled area at all times until transported to a waste disposal site... .

X

After PSAPCA's inspection, Northwest Composites had to pay a contractor \$3,000 to remove the suspected material and pay a \$250 filing fee to PSAPCA twice. Mr. Toomey asserted that initially the company had been unaware of this state's requirements, but had subsequently attempted to comply fully. He stated that when they received their second press, they had to pay \$2,600 to remove suspected material and everything worked out satisfactorily. He seeks a reduction in penalty because of his new company's efforts to comply and because of money already spent.

XI

Any Conclusions of Law deemed to be a Finding of Fact is hereby adopted as such. From these Findings of Fact, the Board makes these

### CONCLUSIONS OF LAW

I

The Board has jurisdiction over the subject matter and the

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1 parties. Chapter 43.21B RCW. The case arises under regulations  
2 implementing the Washington Clean Air Act, Chapter 70.94 RCW.  
3

## 4 II

5 Asbestos is a substance which has been specifically recognized  
6 for its hazardous properties. It is classified pursuant to Section  
7 112 of the Federal Clean Air Act for the application of National  
8 Emission Standards for Hazardous Air Pollutants (NESHAPS). It is a  
9 substance which by Federal Clean Air Act definition:

10 causes, or contributes to, air pollution which may  
11 reasonably be anticipated to result in an increase in  
12 mortality or an increase in serious irreversible, or  
incapacitation reversible illness.

## 13 III

14 The federal asbestos handling regulations have been adopted by  
15 the Washington State Department of Ecology. WAC 173-400-075(1).  
16 PSAPCA has adopted its own regulations on removal of asbestos,  
17 designed to meet or exceed the requirements of the federal/state  
18 regulations. PSAPCA Regulation I, Article 10.

19 PSAPCA's Regulation I, Article 10 recognizes the danger:

20 The Board of Directors of the Puget Sound Air Pollution  
21 Control Agency recognize that asbestos is a serious  
22 health hazard. Any asbestos fibers released into the  
23 air can be inhaled and can cause lung cancer, pleural  
24 mesothelioma, peritoneal mesothelioma or asbestosis.  
25 The Board has, therefore, determined that any asbestos  
emitted to the ambient air is air pollution.

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1 By virtue of Article 10 as a whole, PSAPCA has, in effect, found as a  
2 legislative fact that, unless asbestos is properly handled throughout  
3 its removal and disposal, there is an unacceptable risk asbestos  
4 fibers may escape to the ambient outdoor air.

#### 5 IV

6 The relevant portions of PSAPCA's Regulation I at issue in this  
7 case are:

#### 8 SECTION 10.02 DEFINITIONS

9 [ . . . ]

10 (a) "Adequately wetted" means sufficiently mixed  
or coated with water or an aqueous solution to  
prevent dust emissions.

11 (b) "Asbestos" means the asbestiform varieties  
12 of serpentinite (chrysotile), riebeckite  
(crocidolite), cummingtonite-grunerite, anthophyllite,  
13 and actinolite-tremolite.

14 [ . . . ]

15 (e) "Asbestos material" means any material  
containing at least one percent (1%) asbestos as  
16 determined by polarized light microscopy using the  
Interim Method of the Determination of Asbestos in  
Bulk Insulation samples contained in Appendix A of  
17 Subpart F in 40 CFR Part 763, unless it can be  
demonstrated that the material does not release  
18 asbestos fibers when broken, crumbled, pulverized or  
otherwise disturbed.

19 (f) "Asbestos project" means the construction,  
20 demolition, repair, maintenance, or renovation of any  
public or private building or mechanical piping  
21 equipment or systems involving the demolition,  
removal, encapsulation, salvage, or disposal of the  
22 material releasing, or likely to release, asbestos  
fibers into the air.

23 (g) "Asbestos removal" means to take out or  
24 strip off asbestos materials.

25 [ . . . ]

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(7)

1 (k) "Emergency removal operation" means an  
2 asbestos removal operation that was not planned but  
3 results from a sudden, unexpected event. This term  
4 includes removal operations necessitated by failures  
5 of equipment, identification of additional asbestos  
6 materials during the course of a removal or a removal  
7 necessary to abate an imminent health hazard.  
8 [ . . . ]

#### 9 SECTION 10.03 NOTIFICATION REQUIREMENTS AND FEES

10 (a) It shall be unlawful for any person to cause  
11 or allow the removal or encapsulation of asbestos  
12 materials or to work on an asbestos project from any  
13 structure, installation, vessel or building unless  
14 the owner or person conducting an asbestos removal or  
15 encapsulation operation has filed with the Control  
16 officer written notice of intention to remove or  
17 encapsulate asbestos.

18 (1) If the amount of asbestos material to be  
19 removed is at least 303 linear meters (1000  
20 linear feet) on pipes or at least 460 square  
21 meters (5000 square feet) on other components, the  
22 notice required by Subsection 10.03(a) shall be  
23 received by the Control Officer at least 10 days  
24 before removal begins, accompanied by a \$500  
25 notification fee.

26 (2) If the amount of asbestos material to be  
27 removed is at least 80 linear meters (260 linear  
feet) on pipes or at least 15 square meters (160  
square feet) on other components, but less than  
303 linear meters (1000 linear feet) on pipes or  
460 square meters (5000 square feet) on other  
components, the notice required by Subsection  
10.03(a) shall be received by the Control Officer  
at least 10 days before removal begins,  
accompanied by a \$250 notification fee.

(3) If the amount of asbestos material to be  
removed is less than 80 linear meters (260 linear  
feet) on pipes or 15 square meters (160 square  
feet) on other components but at least 3 linear  
meters (10 linear feet) on pipes or 1 square  
meter (11 square feet) on other components, the



1 notice required by Subsection 10.03(a) shall be  
2 received by the Control Officer at least 20 days  
3 before removal begins, accompanied by a \$100  
notification fee.

4 SECTION 10.04 PROCEDURES FOR ASBESTOS CONTROL  
[ . . . ]

5 (b) It shall be unlawful for any person to cause  
6 or allow the removal or encapsulation of asbestos  
material or to work on an asbestos project unless:

7 (1) The removal or encapsulation is  
8 conducted by a certified asbestos worker; and

9 (2) The following procedures are employed:  
[ . . . ]

10 (iii) Asbestos materials that have been  
11 removed or stripped shall be:

12 (A) Adequately wetted to ensure that  
13 they remain wet until they are collected  
for disposal; and

14 (B) Collected for disposal at the end  
of each working day; and

15 (C) Contained in a controlled area at  
16 all times until transported to a waste  
disposal site; and . . . .

17  
18 V

19 The Washington Clean Air Act is a strict liability statute. Acts  
20 violating its implementing regulations are not excused on the basis of  
21 absence of intent. See, RCW 70.94.040, RCW 70.94.431; Industrial  
22 Maintenance and Construction, Inc. v. PSAPCA, PCHB No. 87-179 (October  
23 1988). Northwest Composites, therefore, cannot rely on lack of  
24 intention or knowledge to relieve them of liability. Appellant's

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1 subsequent diligence is weighed against the amount of the fine, rather  
2 than negating basic liability.

3 VI

4 We conclude that Northwest Composites' actions violated those  
5 provisions of Article 10 which are the basis of the penalty being  
6 appealed. (See Findings of Fact IX above.)

7 VII

8 The purpose of civil penalties is to promote compliance with the  
9 law. Savage Enterprises, Inc. v. PSAPCA, PCHB No. 87-164 (1988). We  
10 therefore conclude that under the facts, penalties were appropriate,  
11 but that this new company has, after a series of costly steps, learned  
12 how to comply and is unlikely to be involved in further violations.

13 VIII

14 Any Finding of Fact deemed to a Conclusion of Law is hereby  
15 adopted as such. From these Conclusions of Law, the Board enters this  
16

ORDER

Notice and Order of Civil Penalty No. 6870 in the amount of \$1,000 against Northwest composites is AFFIRMED, except that \$500 is suspended, provided that during the next two years, appellant does not violate any air pollution laws or regulations in the state of Washington.

DONE this 19<sup>th</sup> day of May, 1989.

POLLUTION CONTROL HEARINGS BOARD

Wick Dufford  
WICK DUFFORD, Chairman

Harold S. Zimmerman  
HAROLD S. ZIMMERMAN, Member